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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 LAURACK D. BRAY,  
14 Plaintiff,  
15 v.  
16 DEPARTMENT OF JUSTICE, et al.,  
17 Defendants.  
18

No. CV 12-5704 CJC (RZx)

**FEDERAL DEFENDANTS' REPLY  
TO COURT'S AUGUST 14, 2012  
ORDER TO SHOW CAUSE**

1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 On July 3, 2012, plaintiff Laurack D. Bray ("Plaintiff") filed a complaint  
3 (along with an ex parte application for a temporary restraining order) against a  
4 number of defendants, including federal defendants United States of America,  
5 United States Department of Justice, United States Attorney's Office, and Federal  
6 Bureau of Investigation.

7 Plaintiff's complaint seeks injunctive relief, including an order compelling  
8 the transfer of possession of 1019 E. Santa Clara Street, Ventura, CA 93001 to  
9 Plaintiff. Plaintiff's complaint also seeks unspecified compensatory and punitive  
10 damages. (Complaint at 33-34.)

11 On August 7, 2012, Plaintiff filed a Petition for Writ of Mandamus with the  
12 Ninth Circuit seeking an order compelling the district court to rule on Plaintiff's  
13 application for a temporary restraining order. See Bray v. United States District  
14 Court for the Central District of California, CA 12-72501.

15 On August 14, 2012, this Court issued an order denying Plaintiff's ex parte  
16 application and further issued an order to show cause why the case should not be  
17 dismissed for failure to state a cognizable claim.

18 On August 20, 2012, Plaintiff filed a response asserting that this Court  
19 lacked jurisdiction to issue its August 14, 2012 Order because Plaintiff had  
20 appealed the issues that the Court was attempting to make a ruling on. (DN#17 at  
21 1.) Plaintiff did not address any of the issues set forth in the Court's August 14,  
22 2012 Order, including the deficiencies in the Complaint that led the Court to issue  
23 its order to show cause re: dismissal. As a result, Plaintiff's complaint should be  
24 dismissed.

25 **II. ARGUMENT**

26 Rule 8(a) of the Federal Rules of Civil Procedure requires "a short and plain  
27 statement of the claim showing that the pleader is entitled to relief." Rule 8(d)(1)  
28 provides, "Each allegation must be simple, concise, and direct." When a pleading

1 fails to comply with the pleading requirements of Rule 8, a defendant may "move  
2 for a more definite statement under Rule 12(e) before responding." Swierkiewicz  
3 v. Sorema N.A., 534 U.S. 506, 514 (2002).

4 The allegations in Plaintiff's Complaint are not simple, concise, or direct.  
5 Plaintiff's Complaint is what courts have characterized as a "shotgun pleading."  
6 See Strategic Income Fund v. Spear, Leeds, & Kellogg Corp., 305 F.3d 1293, 1295  
7 (11th Cir. 2002) ("The typical shotgun complaint contains several counts, each one  
8 incorporating by reference the allegations of its predecessors, leading to a situation  
9 where most of the counts (i.e., all but the first) contain irrelevant factual allegations  
10 and legal conclusions. Consequently, in ruling on the sufficiency of a claim, the  
11 trial court must sift out the irrelevancies, a task that can be quite onerous.")  
12 Shotgun pleadings impede the due administration of justice and amount to  
13 obstruction of justice. Id. at 1295 nn.9-10; see also Magluta v. Samples, 256 F.3d  
14 1282, 1284 (11th Cir. 2001) (appropriate way to deal with shotgun complaint is to  
15 order plaintiff to replead).

16 "Length may make a complaint unintelligible, by scattering and concealing  
17 in a morass of irrelevancies the few allegations that matter." United States ex rel.  
18 Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003).<sup>1</sup> "[U]nless  
19 cases are pled clearly and precisely, issues are not joined, discovery is not  
20 controlled, the trial court's docket becomes unmanageable, the litigants suffer, and  
21 society loses confidence in the court's ability to administer justice." Id. (citing  
22 Anderson v. District Bd. of Trustees, 77 F.3d 364, 367 (11th Cir. 1996)).

23 In Anderson, the 11th Circuit noted that a defendant faced with a lengthy  
24 "shotgun" complaint is "expected to move" for a more definite statement rather  
25

26 <sup>1</sup> For example, Plaintiff's Complaint includes claims against defendants that  
27 he is not permitted to advance, including improperly asserted constitutional claims  
28 against the United States and several federal agencies. See Arnsberg v. United  
States, 757 F.2d 971, 980 (9th Cir. 1985) (United States has not waived its  
sovereign immunity as to constitutional claims).

1 than file an answer, and if the defendant fails to do so, the trial court should sua  
2 sponte require a more definite statement. Anderson, 77 F.3d at 366; see also  
3 McHenry v. Renne, 84 F.3d 1172, 1177-78 (9th Cir. 1996) (affirming dismissal of  
4 a 53-page third amended complaint that was "argumentative, prolix, replete with  
5 redundancy, and largely irrelevant"); Hatch v. Reliance Insurance Co., 758 F.2d  
6 409, 415 (9th Cir. 1985) (affirming dismissal of complaints, "which, including  
7 attachments, exceeded 70 pages in length, were confusing and conclusory and not  
8 in compliance with Rule 8"); Nevijel v. North Coast Life Insurance Co., 651 F.2d  
9 671, 673-74 (9th Cir. 1981) (affirming a dismissal of a 23-page amended  
10 complaint with 24 pages of addenda found to be verbose, confusing and  
11 conclusory); Corcoran v. Yorty, 347 F.2d 222, 223 (9th Cir. 1964) (per curiam)  
12 (affirming dismissal of complaint for alleged fraud and conspiracy in violation of  
13 civil rights, where complaint was "so verbose, confused and redundant that its true  
14 substance, if any, is well disguised"); Agnew v. Moody, 330 F.2d 868, 870 (9th  
15 Cir. 1964) (court was justified in forcing plaintiff to replead where, although  
16 elements and factual context of claim for relief were simple, complaint extended  
17 over fifty-five pages, excluding the prayer and exhibits).

18 "Rule 8(a) requires parties to make their pleadings straightforward, so that  
19 judges and adverse parties need not try to fish a gold coin from a bucket of mud."  
20 United States ex rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir.  
21 2003). Complaints that fail to comply with the requirements of Rule 8 are subject  
22 to dismissal. See, e.g., McHenry, 84 F.3d at 1179 (noting that Rule 8(e) (now set  
23 forth as Rule 8(d)) applies to good claims as well as bad claims, and is a basis for  
24 dismissal independent of Rule 12(b)(6)).

25 Plaintiff's 34-page complaint contains 123 paragraphs and 9 separate claims  
26 against over 20 different defendants. The claims include allegations of racial  
27 discrimination, Fourth Amendment violations, and medical malpractice under the  
28 Federal Tort Claims Act. Even construing the Complaint in the light most

1 favorable to Plaintiff, see Parks School of Business, Inc. v. Symington, 51 F.3d  
2 1480, 1484 (9th Cir. 1995), and granting special leniency to this pro se Plaintiff,  
3 see Hughes v. Rowe, 449 U.S. 5, 9, 101 S. Ct. 173, 176 (1980), Plaintiff's  
4 Complaint should still be dismissed for failure to comply with Rule 8.

5 Furthermore, Plaintiff's assertion that this Court lacked jurisdiction to issue  
6 its August 14, 2012 Order lacks merit. Plaintiff did not file a notice of appeal of an  
7 order of this Court. Instead, Plaintiff merely filed a petition for a writ of  
8 mandamus with the Ninth Circuit seeking an order compelling this Court to rule on  
9 Plaintiff's application for a temporary restraining order. This Court has now  
10 denied Plaintiff's application, and therefore, Plaintiff's petition for a writ of  
11 mandamus will likely be denied as moot.

12 A case becomes moot if the "the issues presented are no longer 'live' or the  
13 parties lack a legally cognizable interest in the outcome." See Murphy v. Hunt,  
14 455 U.S. 478, 481 (1982). When a case becomes moot, the court loses subject  
15 matter jurisdiction. Therefore, the Ninth Circuit will likely dismiss the petition for  
16 a writ of mandamus because it has become moot by subsequent events. See  
17 GATX/Airlog Co. v. U.S. Dist. Court for Northern Dist. of California, 192 F.3d  
18 1304, 1306 (9th Cir.1999); Gomez v. U.S. Dist. Court for Northern Dist. of  
19 California, 966 F.2d 463, 464 (9th Cir.1992).

### 20 **III. CONCLUSION**

21 For the reasons set forth herein, Plaintiff's complaint should be dismissed.

22 Dated: September 4, 2012

Respectfully submitted,

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27 Chief, Civil Division

28 /s/ Jason K. Axe  
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